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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,390	09/15/2003	Dinei A. Florencio	MCS-032-03 (304924.01)	2920
27662 7590 01/15/2009 MICROSOFT CORPORATION C/O LYON & HARR, LLP 300 ESPLANADE DRIVE SUITE 800 OXNARD, CA 93036			EXAMINER LERNER, MARTIN	
			ART UNIT 2626	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/663,390	<b>Applicant(s)</b> FLORENCIO ET AL.	
	<b>Examiner</b> MARTIN LERNER	<b>Art Unit</b> 2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 to 50 is/are pending in the application.
- 4a) Of the above claim(s) 22 to 50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 to 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicants' election of Group I, Claims 1 to 21, in the reply filed on 10 December 2007 is acknowledged. Because Applicants did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 22 to 50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10 December 2007.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claims 1 to 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Independent claims 1 and 8 set forth the limitations of “said expected arrival time representing a predetermined packet late loss time” and “specifying a maximum delay period, extending past the expiration of the expected arrival time, for any missing data packets” because these limitations are not disclosed by Applicants’ originally-filed Specification. Specifically, Applicants’ originally-filed Specification does not set forth at least both an expected arrival time representing a predetermined packet late loss time, and a maximum delay period extending past the expiration of the expected arrival time. The Specification, corresponding to United States Patent Application Publication No. US 2005/0058145, discloses only one delay time T, as shown by ¶¶[0082] - ¶¶[0085]: Figure 4. Although the inventive system and method of packet-loss concealment are compared with the prior art at ¶¶[0064] - ¶¶[0079]: Figure 2, only ¶¶[0082] - ¶¶[0085]: Figure 4 clearly presents anything about delay time T.

Moreover, even considering ¶¶[0064] - ¶¶[0079]: Figure 2, Applicants’ claims are not supported. It is disclosed, at ¶¶[0077]: Figure 2, that the inventive process is distinguished “from conventional stretching schemes in that rather than immediately declaring a packet as a ‘late loss’ when it is not received within a predetermined period of time, the contents of the buffer, the amount of stretching already performed, and the reception of any subsequent packets are all used to determine an appropriate time for declaring that packet to be a late loss.” However, this does not provide any basis for claiming both an “expected arrival time” and a “maximum delay period”. All that is disclosed here is that a time period for declaring a ‘late loss’ is extended from a

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conventional late loss scheme, where a packet is immediately declared to be lost, based upon a number of factors.

Moreover, considering ¶[0078]: Figure 2, an embodiment is disclosed where, rather than setting a time limit for declaring packet loss, the adaptive audio playback controller simply waits for the next packet to be received, or until one of several 'loss conditions' are satisfied. It should be noted that it is not very clear what constitutes these 'loss conditions', as the originally-filed Specification does not concisely enumerate them. One such loss condition is stated to involve setting a maximum delay time for packet receipt. A sufficiently long delay time  $T$  is given, and a late loss will only be declared in relatively extreme delay cases, as where a signal connection is lost. The delay time  $T$  is on the order of about 20 ms to 1 sec for this embodiment. Here, though, the embodiment of ¶[0078]: Figure 2 appears to be an alternative to the embodiment set forth by ¶[0077]: Figure 2, because the time period is set to a "loss condition" when a maximum delay time of around 100 ms is reached, rather than making an appropriate time for declaring a packet loss to depend upon the contents of the buffer, the amount of stretching already performed, and the reception of any subsequent packets. Significantly, any embodiment directed to a maximum delay time does not appear to be clearly disclosed in combination with making the predetermined period of time dependent upon the contents of the buffer, *etc.* The embodiment of a maximum delay time is only set forth very briefly, and is not shown by the embodiment of ¶[0082] - ¶[0085]: Figure 4. Furthermore, ¶[0078]: Figure 2 does not relate any "maximum delay period" as "extending past the expiration of the expected arrival time". Indeed, any

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"expected arrival time" is not disclosed because the inventive concept appears to be distinguished by not having any expected arrival time, as would characterize the conventional scheme of "late loss".

Furthermore, Applicants' claimed invention is not clearly disclosed at ¶[0079]: Figure 2, either. Here, a second loss condition is described. It is stated that conventional schemes ignore packet arrival order, and wait a maximum amount of time regardless whether a subsequent packet is received or not. While it is unclear quite what is here being disclosed as conventional as distinct from inventive, it appears that an adaptive playback controller reduces the time to declare a late loss whenever a subsequent packet is received prior to receiving the expected packet. Thus, an order of packet arrival may be involved in declaring a loss to take into account packet inversion. Additionally, it is stated that the adaptive controller waits before declaring a loss, but there is no time period specified for waiting so as to be linked to either an expected arrival time or a maximum delay period.

Applicants' Summary discloses similarly brief and jumbled embodiments at ¶[0016] - ¶[0019]. However, the Summary does not expressly disclose the term "expected arrival time" and does not clearly say that a maximum delay period extends past the expiration of the expected arrival time. Here, the Summary again draws a distinction between a conventional "late loss" scheme where a packet is expected to be received within a predetermined period of time, and the inventive concept where a time limit for declaring a packet lost is set based on one of several "loss conditions", which

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are not clearly enumerated in any comprehensive way. No “expected arrival time” appears to be expressly involved in the inventive concept.

Therefore, Applicants' Specification as originally filed does not provide an adequate written description of the invention as now claimed. The Specification does not fully and clearly set forth the limitations of both “an expected arrival time” and a distinct “maximum delay period”, where an “expected arrival time” represents “a predetermined packet late loss time” and a “maximum delay period” extends past “the expiration of the expected arrival time”. Applicants' Figures 2 to 4 present flow charts of the inventive system and method, but do not indicate any “expected arrival time” or “maximum delay period”, and only set forth a “delay time T” in Figure 4: Step 420. Figures 2 to 4 do not show any of the various “loss conditions”, of which the “maximum delay period” appears to be one. Generally, the Specification is confusing as to what factors are to be considered, and how these factors fit together into a coherent whole.

### ***Response to Arguments***

5. Applicants' arguments filed 18 December 2008 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to Applicants' disclosure.

Dowdal and Kotabe et al. disclose related art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARTIN LERNER whose telephone number is (571)272-7608. The examiner can normally be reached on 8:30 AM to 6:00 PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Hudspeth can be reached on (571) 272-7843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Martin Lerner/  
Primary Examiner  
Art Unit 2626  
January 13, 2009